

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In The Matter of)

Reorganization and Revision)
Parts 1, 2, 21 and 94 of the)
Rules to Establish a New Part 101)
Governing Terrestrial Microwave)
Fixed Radio Service)

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS
OF
ENTERGY SERVICES, INC.

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EXECUTIVE SUMMARY

Entergy Services, Inc. ("Entergy") agrees that the microwave community would benefit from a comprehensive set of point-to-point microwave rules, and applauds the Commission's efforts to streamline the private operational-fixed microwave and the common carrier point-to-point microwave rules to ease the regulatory burden on licensees. Entergy, nevertheless, believes that further amendments, as suggested herein, will result in a more consistent and simpler set of microwave rules. The recommendations foster efficient use of the microwave spectrum, eliminate onerous regulatory filing requirements, and promote equitable treatment between Part 21 and Part 94 microwave licensees. Specifically, Entergy recommends that the Commission:

(1) allow Part 94 licensees to lease reserve capacity to common carriers for their customer traffic; (2) allow both common carrier and noncommon carrier use and licensing of Part 21 microwave transmitters; (3) apply the 21-day minor modification rule to Part 94 licensees; and (4) apply the BSTA policy to Part 94 licensees.

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COMMENTS
OF
ENTERGY SERVICES, INC.

Entergy Services, Inc. ("Entergy"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's Rules and Regulations, hereby submits the following Comments on the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

I.
Statement of Interest

1. Entergy is an electric utility holding company with interest in five electric utility operating companies -- Gulf State Utilities, Arkansas Power & Light Company,

^{1/} In The Matter of Reorganization and Revision Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service, WT Docket No. 94-148, Notice of Proposed Rule Making, adopted December 9, 1994, 60 Fed. Reg. 2722 (January 11, 1995), Order, DA95-140, extending the Comment date to February 17, 1995 and Reply Comment date to March 17, 1995 (February 2, 1995).

-- Gulf State Utilities, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Company which together operate an integrated electric utility system serving consumers in the State of Louisiana, almost all of the State of Arkansas, the eastern half of Texas and western Mississippi. Entergy and its operating companies are licensees of numerous private operational-fixed microwave facilities throughout their service areas.

2. Entergy uses its private operational-fixed microwave facilities for internal communications and for the carriage of traditional private microwave communications. Accordingly, Entergy has an interest in the outcome of this proceeding, as the proposed Part 101 will govern its private operational-fixed microwave operating authority.

II.

Introduction

3. In this proceeding, the Commission proposes to simplify the rules for common carrier point-to-point and private operational-fixed microwave services, currently contained respectively in Parts 21 and 94 of the Commission's rules by consolidating these rules into a new Part 101. It states that the proposed Part 101 rules make

few substantive rule changes, and are a mere consolidation of Parts 21 and 94 rules to create a comprehensive rule part of the combined services. Nevertheless, the Commission invites proposals to make substantive amendments to its microwave rules.^{2/} Therefore, Entergy is pleased to submit the following Comments for the Commission's consideration in this proceeding.

(III.)
Comments

4. Entergy supports the Commission's underlying premise to simplify and streamline the existing common carrier and private operational-fixed microwave rules. It agrees that due to the commonality of these rules and the industry's move to create common standards and coordination procedures, it is appropriate to consolidate these rules into one comprehensive part. Because these microwave services also share virtually the same frequency bands, with the exception of the 2 GHz band, and adhere to similar technical and operational rules, Entergy believes that further streamlining of these rules, as recommended herein, is in the public interest. Entergy would like to maintain the flexibility it currently enjoys under the existing

^{2/} NPRM at ¶ 7.

Part 94 rules, and desires to maximize its options while continuing to carry private, internal 800 MHz communications over its Part 94 microwave system. Furthermore, Entergy believes that the microwave services should be regulated alike, where possible, to create an even more streamlined set of regulations.

Private Operational-Fixed Microwave Licensees Should Be Permitted to Lease Reserve Capacity to Common Carriers

5. In the NPRM, proposed Section 101.135 incorporates existing Section 94.17 which currently governs shared use of radio stations and the offering of private carrier service. The proposed rule merely restates Section 94.17 in that it maintains the eligibility restrictions regarding shared use of private operational-fixed microwave facilities.

6. Entergy believes this is an opportune time to eliminate any restriction that would preclude private operational-fixed microwave licensees from leasing reserve capacity to common carrier entities for their customer traffic. Prudent utility planning requires systems to be constructed initially with reserve capacity. This planning coupled with the size of the microwave bandwidth and advances in technology allow many private operational-fixed microwave licensees to have reserve bandwidth capacity,

which is put to use as Part 94 licensees expand their systems. Often, the reserve capacity remains available for shared use due to improvements in transmission techniques and increases in transmission rates which have created substantial efficiency in private operational-fixed microwave spectrum use. However, Part 94 licensees are sometimes unable to find other eligible users to share their reserve microwave capacity.

7. In the NPRM, the Commission notes that one of the goals of this proceeding is to "encourage more efficient use of microwave spectrum."^{3/} Shared use of reserve capacity with common carriers promotes efficient use of the microwave spectrum, as it utilizes unused spectrum capacity. Therefore, it is in the public interest for the Commission to eliminate the eligibility and permissible use limitations in proposed Section 101.135, and allow common carriers to lease reserve capacity on a private operational-fixed microwave system for their customer traffic.

8. Moreover, allowing private operational-fixed microwave licensees to lease reserve capacity to common carriers for their customer traffic does not render the

^{3/} NPRM at ¶ 7.

service a common carrier one. Rather, it is merely a private carrier offering to a customer who happens to be a common carrier. The Part 94 licensee still has the discretion to refuse a customer's request for service, and implement different service offerings and rates, thus maintaining its private carrier status.^{4/} Accordingly, the underlying intent of the existing and proposed permissible use rules enunciated in Sections 94.9 and 101.603(b)(1), respectively, are not undermined. The Part 94 service will still be a private one. Entergy recommends deletion of subsection (b)(1) of the proposed rule and of any other language referring to eligibility limitations.

The Commission Should Allow Common Carrier and Noncommon Carrier Use and Licensing of Microwave Transmitters

9. Entergy seeks further relief from the microwave licensing and use restrictions found in Part 21. Entergy believes that the Commission should permit dual use and licensing of point-to-point microwave transmitters for common carrier and noncommon carrier purposes. As proposed, the Commission will incorporate existing Section 21.119 which places limitations on the use of point-to-point microwave transmitters. Specifically, proposed

^{4/} Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 641 (D.C. Cir. 1976).

Section 101.113 will retain the prohibition on licensing or use of common carrier microwave transmitters for noncommon carrier purposes. Entergy sees no benefit in the retention of this rule section. As indicated earlier, there is virtually no distinction in frequency allocation for all point-to-point microwave services (private and common carrier) with the exception of the 2 GHz band, and this rule does not preserve any frequencies allocated to a particular service. Rather, the frequencies are fungible and are licensed on a first-come/first-served basis.

10. Moreover, as indicated above, the technological advances made in microwave equipment have made more spectrum capacity available. With the new microwave equipment, the transmitters do not have to be dedicated on a full-time basis to a particular service.

11. Finally, the concept of dual licensing is not novel for the Commission. In fact, the Commission currently allows dual licensing in at least two instances. First, the same transmitter can be licensed to different entities. Under Part 90, Section 90.185 permits multiple licensing of radio transmitting equipment in the mobile radio service. Part 94 microwave service also allows multiple entities to use the same transmitter. Second, the same transmitter can

be licensed for different uses. Evidence of this concept can be found in the CMRS proceeding where the Commission recently stated that it favored issuing a single license to mobile service providers offering both commercial and private services on the same frequency.^{5/}

12. Proposed Section 101.133 serves no useful purpose. In fact, the Commission eliminated the same rule when rewriting its Public Mobile Service rules, Part 22. The Commission indicated:

Advances in technology, such as improved digital transmission techniques and store-and-forward technology, have resulted in dramatically increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wide-area service could achieve substantial economies of scale by sharing transmitters when building a regional or nationwide system without diminishing the licensee's quality of service. . . . Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different channels.^{6/}

^{5/} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, ¶ 115 (1994).

^{6/} In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service, CC Docket No. 92-115, CC Docket No. 94-46, 9 FCC Rcd 6513 (1994).

For many of the same reasons that persuaded the Commission to eliminate Section 22.119, Entergy believes it is appropriate and necessary to eliminate the same rule section for Part 21 microwave systems. Therefore, Entergy recommends complete deletion of proposed Section 101.133 from Part 101.

The Commission Should Extend the 21-Day Minor
Modification Rule to Private Operational-Fixed Licensees

13. To the extent possible and where the Commission proposes applying Part 21 application procedures to Part 94 applicants, Entergy believes that favorable application policies also be applied to Part 94 applicants. For example, the NPRM proposes to incorporate current Section 21.41 into proposed Section 101.59 which provides that an application to modify the microwave facilities will be deemed licensed on the 21st day following the date of the Public Notice. The Commission does not propose to extend this rule to Part 94 licensees. Entergy recommends extension of this rule section to Part 94 licensees.

14. Since the Commission is proposing to apply many Part 21 licensing and application procedures to Part 94 applicants and licensees, it seems inequitable not to extend the same favorable licensing procedures to private

operational-fixed licensees. Furthermore, the proposed Part 101 consolidates the rules which distinguish between major and minor modifications, and both services must adhere to the same licensing procedures regarding license modifications. Entergy believes that Part 94 licensees should not be disadvantaged, and should be allowed to have their minor modification applications deemed authorized on the 21st day following the date of the public notice. Therefore, Entergy seeks insertion of the term "private operational-fixed microwave" in the list of services enunciated in proposed Section 101.59(b) (1).^{7/}

The Commission Should Extend the Blanket Special Temporary Authority to Private Operational-Fixed Microwave Licensees

15. Finally, Entergy believes the public would benefit from extension of the Blanket Special Temporary Authority ("BSTA") policy to Part 94 applicants. Although this policy is not codified under any Part 21 rules, in 1993, the Commission's Microwave Branch in Gettysburg issued a Public Notice establishing this new STA policy. The policy allows a Part 21 licensee, when issued a BSTA, to begin construction and operation of its microwave facilities once the underlying application appears on public notice as

^{7/} NPRM, Appendix A, p. 60.

accepted for filing, thus alleviating the need to file a separate STA request. This, as the Commission indicated, saves both the applicant and the Commission valuable administrative time and resources. More importantly, the policy facilitates expedient service to the public. The Commission has not, however, extended this policy to Part 94 applicants. With licensing procedures virtually the same and now proposed to be governed by the same rule part, it again seems inequitable to extend such favorable operating authority to one microwave service over another. Therefore, Entergy seeks issuance of a separate Public Notice extending the BSTA authority to Part 94 licensees.

Conclusion

16. Entergy supports the Commission's efforts to streamline and simplify the existing Part 21 and Part 94 microwave rules. It believes that this NPRM is a positive step in the direction to reduce unnecessary regulations. The recommendations espoused herein merely foster these goals, and specifically help to efficiently use the microwave spectrum. The recommendations maintain existing Part 94 entitlements while maximizing the use of the microwave spectrum. They also create an equitable operating environment for both common carrier and private carrier

microwave licensees without jeopardizing the fundamental roles of the separate services. Entergy seeks adoption of the NPRM as proposed but with the recommendations suggested herein. Specifically, the Commission should: (1) amend proposed Section 101.35 to allow Part 94 microwave licensees to lease reserve capacity to common carriers for their customer traffic; (2) delete proposed Section 101.33; (3) apply proposed Section 101.59(b)(1) to Part 94 licensees to permit their minor modification applications to be deemed authorized on the 21st day following public notice; and (4) extend the Blanket Special Temporary Authority policy to Part 94 licensees.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Services, Inc. respectfully requests that the Commission act upon its Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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